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No. 07-399

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

TAWOOS BAZARGANI,

Petitioner,

v.

KENNETH SNYDER and JACQUELINE SNYDER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Dated: October 18, 2007

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BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Following a two-day trial held in June, 2005, the Jury found that petitioner Tawoos Bazargani and co-defendant Paul Bagherpour committed deliberate violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and Pennsylvania's Human Relations Act, 43 P.S. § 955(h)(1). Specifically, the Jury found that Bagherpour had illegally questioned plaintiff Kenneth Snyder about his religious affiliation and that both defendants had refused to rent Bazargani's condominium to Kenneth Snyder and his wife Jacqueline Snyder because the Snyders are Jewish.

Based on that finding of intentional discrimination, the Jury awarded the Snyders $40,000 in compensatory damages, $20,000 in punitive damages against Bazargani, and $30,000 in punitive damages against Bagherpour. The District Court denied defendants' post-trial motions and upheld the Jury's verdict in all respects. In a June 22, 2007 non-precedential opinion, the Court of Appeals for the Third Circuit Court affirmed the District Court's judgment in its entirety.

On appeal to the Third Circuit, Bazargani sought reversal of the District Court's judgment on the grounds of: (1) an alleged prior inconsistent statement by a witness the Snyders called at trial; (2) a settlement proposal purportedly accepted by Bazargani just days before trial; and (3) insufficient evidence to establish that Bagherpour was acting as Bazargani's agent. As the Third Circuit properly

pointed out, Bazargani failed to raise the first two issues at trial, and her arguments based on an alleged insufficiency of evidence were contrary to the "ample evidence" supporting the Jury's express finding that, at all relevant times, Bagherpour was acting as Bazargani's agent.

Although in large part incomprehensible, Bazargani's Petition for Writ of Certiorari appears to repeat many of the arguments that she raised unsuccessfully in the Third Circuit, without attempting to explain how the Third Circuit erred or why this case presents any issue remotely worthy of Certiorari.

Bazargani's Petition begins with a convoluted description of the Snyders' many efforts to settle the case, which Bazargani continually rebuffed or ignored. As both the Third Circuit and the District Court noted, Bazargani's execution just days before trial of a settlement offer that the Snyders had withdrawn weeks earlier was too late. [App. 9-10; 12-13].[1] Equally fatal was Bazargani's failure to raise the affirmative defense of settlement at trial.

Bazargani also complains that her attorney was permitted to withdraw before trial, and that she was required to proceed *pro se*, to her prejudice. Bazargani's attorney sought and was allowed to withdraw because Bazargani demanded that the attorney appeal an

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[1] The Third Circuit's opinion is attached at App. 1-10. The District Court's opinion reproduced in Bazargani's Petition for Writ of Certiorari was missing all of page three, and is reproduced in full here at App. 11-15.

arbitration award in Bazargani's favor and because, at the time, Bazargani refused the Snyders' offer to settle their claims through appropriate mutual releases. Bazargani suggests that the District Court should not have allowed her attorney to withdraw because Kenneth Snyder had purportedly threatened Bazargani "that he is a Jewish man who belongs to a world-wide network that has endless power and that Dr. Bazargani either leases him her apartment or suffers from consequences." [Petition for Writ of Certiorari at p. 26]. Whatever Bazargani may be implying by this allegation, she never appealed the District Court's order allowing her attorney to withdraw his appearance.

In Question III, Bazargani argues that Jury verdict should be vacated because a witness for the Snyders allegedly gave inconsistent testimony about his membership in the Pennsylvania Bar. As the Third Circuit noted, however, the Snyders called this witness not to testify about his professional credentials, but to relate the substance of his phone call with Bagherpour in which the witness asked Bagherpour why Bagherpour had questioned the Snyders' religious affiliation. Moreover, as the Third Circuit further noted, although Bazargani cross-examined the witness, she never bothered to question him about this alleged inconsistency.

In Question IV, Bazargani challenges the Jury's finding that Bagherpour was acting as Bazargani's agent when he posed the illegal question about the Snyders' religious affiliation. As the Third Circuit properly concluded, the Jury had "ample evidence" to support its finding that Bagherpour was acting

within the scope of his agency when he violated the Federal Housing Act and the Pennsylvania Human Relations Act. Additionally, and as the Third Circuit likewise concluded, Bazargani's refusal to rent her condominium to the Snyders because of their religious affiliation violated the Fair Housing Act, 42 U.S.C. § 3604(a), and the Pennsylvania Human Relations Act, 43 P.S. § 955(h)(1), wholly independent of Bagherpour's violations.

Bazargani concludes her Petition for Writ of Certiorari with two arguments that are nearly impossible to decipher. Question V refers to a supersedeas order issued by the District Court that conditioned any stay of execution on the posting of a $10,000 supersedeas bond. Bagherpour posted $5,000, but Bazargani posted nothing, moved for reconsideration of the supersedeas order, and appealed the District Court's denial of reconsideration. Bazargani relates that she received a letter from the Clerk's office of the Third Circuit suggesting that the appeal was possibly subject to dismissal as being untimely. In fact, the Snyders never argued that the appeal, however frivolous, was untimely.

Indeed, to avoid any further waste of resources, the Snyders stipulated to a stay of execution on their judgment pending the Third Circuit's disposition of all appeals from the District Court's judgment on the Jury's verdict. In affirming the District Court's judgment in its entirety, the Third Circuit dismissed Bazargani's appeal of the supersedeas order as moot, which it was then and remains now.

Finally, citing the "American rule" on attorney's fees, Bazargani appears to contend that this Court should grant Certiorari to review the District Court's refusal to deny the Snyders' initial and supplemental motions for attorney's fees. Aside from the fact that Bazargani failed to appeal this issue, and indeed could not appeal such a "refusal" on ripeness grounds, Bazargani clearly fails to recognize that under the Fair Housing Act and Pennsylvania's Human Relations Act, the American rule has been superseded by statute. *See* 42 U.S.C. § 3613(c)(2) (providing for award of attorney's fees to prevailing party on Fair Housing Act claim); 43 P.S. § 962(c)(2).

Thus, presenting no colorable claim of constitutional significance or otherwise worthy of this Court's review, Bazargani's Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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Dated: October 18, 2007

NOT PRECEDENTIAL

IN THE UNITED STATES COURT
OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 06-2396, 05-4051 and 05-3817

KENNETH SNYDER; JACQUELINE SNYDER
Appellees in Nos. 06-2396, 05-4051 and 05-3817

v.

TAWOOS BAZARGANI; PAUL BAGHERPOUR

Tawoos Bazargani, Appellant in Nos. 06-2396 and 05-4051 Paul Bagherpour, Appellant in No. 05-3817

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action No. 02-cv-08845)
District Judge: Hon. John P. Fullam

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 15, 2007

BEFORE: McKEE, STAPLETON and NYGAARD
Circuit Judges

(Filed: June 22, 2007)

OPINION OF THE COURT

STAPLETON, *Circuit Judge.*

Appellees Kenneth and Jacqueline Snyder brought this action alleging that appellants Tawoos Bazargani and Paul Bagherpour, in violation of the federal Civil Rights Act, the federal Fair Housing Act ("FHA") and Pennsylvania's Human Relations Act ("PHRA"), inquired regarding the Snyders' religious affiliation and thereaafter refused to rent them a condominium because they were Jewish. Bazargani was the owner of the condominium; she had asked Bagherpour, a friend, to assist her in finding a tenant.

I.

Prior to trial, the District Court entered a partial summary judgment against Bagherpour on the issue of his liability under the PHRA. Its ruling was as follows:

> The Pennsylvania Human Relations Act provides: "It shall be an unlawful discriminatory practice . . . for any person to . . . make any inquiry or elicit any information . . . concerning religious creed or ancestry – in connection with the lease of any housing accommodation."43 P.S. § 955(h)(6). It is conceded that, on December 8, 2000, in the course of a telephone conversation with plaintiff Kenneth Snyder, Mr. Bagherpour did in fact ask what the

> Snyders' religious affiliation was. Since that inquiry violated the statute, plaintiffs are entitled to partial summary judgment on liability, to that extent, against the defendant Bagherpour."

App. at 3.

After a two-day trial, the jury answered the following interrogatories in the following manner:

> THE COURT: To your first question:
> Did Dr. Bazargani decline to rent the condominium to plaintiffs because of their religious affiliation?
> You say: Yes.
>
> No. 2:
>
> In asking – Mr. Bagherpour did ask about plaintiffs' religion. In asking that question, was Mr. Bagherpour seeking information which would affect plaintiff's suitability as tenants?
>
> You say: Yes.
>
> 3:
>
> By asking about plaintiffs' religion, Mr. Bagherpour violated the Pennsylvania Humans Relations Act: Is Dr. Bazargani also liable for that violation, that is, was Mr. Bagherpour her agent acting within the scope of his agency?
>
> You say: Yes.
>
> And No. 4:

> State the amount of compensatory damages sustained by plaintiffs as a result of the violation or violations you have found.
>
> You say: $40,000.00
>
> And No. 5:
>
> State the amount of punitive damages, if any, to be paid by each defendant.
>
> You say: Dr. Bazargani, $20,000.00 and Mr. Bagherpour, $30,000.00
>
> Do you all agree on those answers?
>
> THE JURY: Yes.

App. at 748-49.

The District Court denied motions of both defendants for a new trial. While finding the jury's verdict "extremely generous," the Court was "not persuaded that there [was] justification for setting the verdict aside." App. at 10. In response to the defendants' argument that it had erred in submitting the punitive damage issue to the jury, the Court ruled that punitive damages were appropriate under the FHA:

> Since the jury, in answers to interrogatories, expressly found that the defendant Agent had violated the terms of the statute by making the prohibited inquiry about religion, and that plaintiffs' religion was a substantial factor in the ultimate decision not to lease the property to them, it was entirely proper to submit the issue of punitive damages to the jury. *Alexander v. Riga*, 208 F.3d

> 419, 431 (3d Cir. 2000) [(holding that punitive damages are available for intentional violations of the FHA)].

App. at 3. Both defendants appealed.

While these two appeals were pending (*i.e.*, Nos. 05-3817 and 05-4051), Bazargani filed a third appeal from a supersedeas order (No. 06-2396). This Court advised the Snyders that, if they obtained an order from the District Court waiving the bond requirement pending a determination by this Court on the merits of the underlying appeals at 05-4051 and 05-3817, Bazargani's appeal at 06-2396 would be moot. The Snyders obtained such an order from the District Court temporarily waiving any bond requirement pending this Court's ruling on the merits of Bazargani's appeal at 05-4051 and Bagherpour's appeal at 05-3817. Accordingly, Bazargani's appeal at 06-2396 will be dismissed as moot.

II.

Appellant Bagherpour insists in his appeal that: (1) the District Court erred in granting partial summary judgment on the issue of his liability under the PHRA; (2) there is insufficient evidence to support the jury's finding of discriminatory intent; (3) there is insufficient evidence to support the jury's finding that the Snyders sustained actual injury; (4) the District Court erred in not instructing the jury that it could award punitive damages for "intentional" discrimination on the basis of religion only if that discrimination

was "wanton and reckless" (App. at 746); and (5) plaintiffs' counsel, in his closing remarks, improperly asked the jury to act as "Attorney Generals" and "send a message" that discrimination must be punished. We find each of these arguments unpersuasive.

We do not understand Bagherpour to dispute that he asked the Snyders about their religious affiliation in connection with the leasing of a housing accommodation. Nor does he cite us to any authority for the proposition that 43 P.S. § 955(h)(6) does not make this an unlawful discriminatory practice without regard to the purpose of the inquiry. We agree with the District Court that the Supreme Court of Pennsylvania would apply § 955(h)(6) in accordance with its plain meaning and that partial summary judgment was appropriate.

While Bagherpour did not admit that in asking about the Snyders' religious affiliation he was "seeking information which would affect plaintiffs' suitability as tenants," there was ample circumstantial evidence to support the jury finding to that effect. Similarly, the record contains ample direct and circumstantial evidence to support the jury's finding that the Snyders sustained actual injury in the form of mental and emotional distress. While we agree with the District Court that the jury's award of compensatory damages of $40,000 to the two plaintiffs was generous, we also agree that it is not so excessive that it can properly be set aside.

The District Court instructed the jury that it could award punitive damages if it concluded that Bagherpour intentionally asked about the Snyders' religious affiliation in order to secure information that would affect their suitability as tenants and that Bazargani intentionally declined to rent the condominium to the Snyders because of their religious affiliation. The District Court declined the request of Bagherpour's counsel to instruct the jury that the defendants' conduct would have to be "not only intentional" but "wanton and reckless." App. at 746. While it is true that "wanton and reckless" misconduct can sometimes serve as a *surrogate* for intentional misconduct, giving rise to punitive damage liability, both are not required. Indeed, wanton disregard and recklessness are generally regarded as inconsistent with intentional misconduct. The District Court did not abuse its discretion in declining to give it.[1]

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[1] We are mindful of the fact that punitive damages are not available under the PHRA. *See Hoy v. Angelone,* 720 A.2d 745 (Pa.1998). The plaintiffs proceeded here on the basis of both the PHRA and the federal FHA, however, and the District Court's instructions on punitive damage were consistent with the law concerning the availability of punitive damages under the FHA. *See Alexander v. Riga,* 208 F.3d 419, 431 (3d Cir. 2000) ("[B]ecause of the jury's finding of intentional discrimination [in violation of the FHA], the plaintiff need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages."). We note that Bagherpour does not take issue with the District Court's conclusion that the intentional discrimination found by the jury was a violation of the Fair Housing Act, and the jury's verdict regarding punitive

(Continued on following page)

We do not agree with Bagherpour that the closing argument of plaintiffs' counsel asked the jury to reach "a decision based upon issues outside the evidence and testimony of [this] case." Bagherpour Br. at 13. Nor do we regard his remarks referencing "Attorney Generals" and "sending a message" to be inappropriate in an FHA case seeking punitive damages. *Alexander v. Riga,* 208 F.3d 419, 425-26 (3d Cir. 2000) (noting Congress's reliance on "private attorneys general" to vindicate a policy "of the highest priority" embodied in the FHA); *Settlegoode v. Portland Pub. Schools,* 371 F.3d 503, 519 (9th Cir. 2004) ("Reminding the jury that they have the capacity to deter defendants and others similarly situated is certainly legitimate where punitive damages are at stake."); *The Emery-Warehouse Co. v. Rhode Island Hospital Trust National Bank,* 757 F.2d 399, 410 (1st Cir. 1985) ("send a message" closing statement appropriate because "counsel is permitted to argue the need for an award of punitive damages as a deterrent against similar conduct by this defendant or by others").

III.

Bazargani, proceeding *pro se*, contends that the judgment of the District Court against her must be reversed because (1) one of the Snyders' witnesses,

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damages can thus stand based on that Act even though not authorized by the PHRA.

Larry Ceisler, committed perjury during his cross examination; (2) she and the Snyders had reached a settlement agreement prior to trial; and (3) Bagherpour ceased to be her agent "as soon as [she] learned about the Snyders' dog" because she had made it clear to Bagherpour that she would not permit an animal in her property. Bazargani Br. at p. 16. We are not persuaded.

Ceisler testified on cross examination that he had graduated from law school, passed the bar, secured a bar number, and practiced for approximately four years. Bazargani insists that Ceisler earlier testified in an arbitration proceeding that he had not secured a bar number. She did not, however, choose to cross examine him at trial about this alleged prior inconsistent statement. Moreover, Ceisler's status with the bar had nothing to do with his testimony and was not material to any issue presented by the facts of this case. In all events, a prior inconsistent statement of a witness clearly provides no basis for overturning a jury's verdict.

As early as the Fall of 2004, the Snyders offered to settle their claims against Bazargani with an exchange of mutual releases. The parties thereafter exchanged forms of release, but they could not agree upon one that Bazargani was willing to sign. The last form she submitted to the Snyders contained language the District Court described as "virtually incomprehensible." App. at 2. As trial approached, the Snyders offered Bazargani a final opportunity to settle for an exchange of mutual general releases,

setting a deadline of April 29, 2005. On May 4, 2005, the Snyders notified Bazargani that, not having received an executed release, they would pursue their claims at trial. On June 10, 2005, five days before trial, Bazargani executed and submitted the form of general release that had been given to her in the Fall of 2004. She then proceeded to trial without raising settlement as a defense. Clearly, the Snyders' offer of settlement had been withdrawn before Bazargani executed a release and, in any event, Bazargani is not in a position after the jury's verdict to make a contrary claim.

With respect to Bagherpour's agency, the jury determined that he was Bazargani's "agent acting within the scope of his agency." App. at 748. There is ample evidence to support this finding, and it cannot be disturbed. Moreover, the judgment does not rest solely on this finding. The jury also concluded that Dr. Bazargani personally "decline[d] to rent the condominium to plaintiffs because of their religious affiliation," *id.*, which is an independent violation of the FHA, 42 U.S.C. § 3604(a), and the PHRA, 43 P.S. 955(h)(1).

IV.

The judgment of the District Court in No. 05-3817 and 05-4051 will be affirmed. The appeal in No. 06-2396 will be dismissed as moot.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	CIVIL ACTION
v.	:	
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-08845-JF

MEMORANDUM AND ORDER

(Filed July 29, 2005)

Fullam, Sr. J. July 28, 2005

The defendant Tawoos Bazargani (hereinafter referred to as "Owner") is the owner of a certain condominium property in Philadelphia which she leases to tenants. The defendant Paul Bagherpour (hereinafter referred to as "Agent") acted as her real estate agent in leasing the property. Plaintiffs sought to lease the condo, which had been advertised as available for rent. After plaintiff Kenneth Snyder expressed his willingness to lease the property, the defendant Agent asked Mr. Snyder what his religious affiliation was, and Mr. Snyder replied that he was Jewish. A few days later, the Snyders were informed that the Owner would not lease the property to them. They brought this action for violation of the Fair Housing Act and the equivalent Pennsylvania statute. The jury awarded substantial damages against both defendants. Both defendants have filed motions for a new trial.

The defendant Owner was not represented by counsel at trial. She had been represented by counsel at earlier stages of this litigation. The case went to arbitration. The arbitrators rendered a decision favorable to the plaintiffs. At that point, in various conferences before another judge of this court, to whom the case was then assigned, counsel reached a modest settlement, contingent upon the exchange of releases. Contrary to her counsel's advice, the defendant Owner rejected the settlement, and insisted upon proceeding to the *de novo* trial which plaintiffs were entitled to, since they had appealed from the arbitration award. Her counsel then withdrew, and she has proceeded *pro se* since then.

While the case was pending, plaintiffs' counsel again confirmed to the defendants that plaintiffs were willing to carry out the agreed settlement, provided the defendants signed the required release by a specified date. The defendant Owner did not agree, and the case proceeded to trial.

The jury found both defendants liable, and awarded $40,000 in compensatory damages, plus $20,000 in punitive damages against the Owner, and $30,000 in punitive damages against the defendant Agent.

In her *pro se* "Motions for a New Trial and to Alter the Judgement," the defendant Owner asserts that the trial should not have occurred and its results should now be set aside, because, five days before trial, she finally signed the requested release. Her

offer to settle was then rejected by plaintiffs, as having been tendered too late. The Owner's post-trial motion plainly lacks merit.

In a separate motion for a new trial, the defendant Agent (who is represented by counsel) argues that the compensatory award is grossly excessive, and that the court erred in submitting the issue of punitive damages to the jury.

Since the jury, in answers to interrogatories, expressly found that the defendant Agent had violated the terms of the statute by making the prohibited inquiry about religion, and that plaintiffs' religion was a substantial factor in the ultimate decision not to lease the property to them, it was entirely proper to submit the issue of punitive damages to the jury. *Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir. 2000).

The defendant Agent also seeks a new trial because plaintiffs' counsel, at one point, urged the jury to "send a message" to the defendants about the importance of avoiding discriminatory practices. No objection was voiced at the time, so the issue has been waived. Moreover, in my view, no error was committed. This was not a criminal case, where such an argument would be improper. In a civil case, a plaintiff seeking punitive damages should certainly be allowed to explain what punitive damages are intended to achieve, namely, to "send a message" to deter repetition of the discriminatory conduct.

Although not material to deciding the present motion, it bears mention that the Agent's trial counsel, in his closing argument, saw fit to make arguments which really were improper. He expressed his personal view that the anti-discrimination statutes were a bad idea, and that a property owner should be permitted complete freedom in deciding whom to accept as tenants. He also expressed his personal opinion by scoffing at the testimony of the wife-plaintiff that, because she had long been exposed to discrimination in her earlier life, she had experienced emotional trauma as a result of plaintiffs' rejection by the defendants. His complaint about his opponent's argument rings hollow.

Finally, while the jury's verdict was extremely generous, I am not persuaded that there is justification for setting the verdict aside.

For all of the foregoing reasons, defendants' post-trial motions will be denied.

An Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH SNYDER and JACQUELINE SNYDER	:	CIVIL ACTION
v.	:	
TAWOOS BAZARGANI and PAUL BAGHERPOUR	:	NO. 02-08845-JF

ORDER

(Filed July 29, 2005)

_____ AND NOW, this 28th day of July 2005, upon consideration of defendants' post-trial motions, and plaintiffs' responses, IT IS ORDERED:

That the defendants' post-trial motions are DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.